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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 292

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner

v.

OVERNITE TRANSPORTATION COMPANY,

Respondent

On Petition for a Writ of Certiorari to the Supreme Court of the State of North Carolina

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

Where a Labor Union is admittedly guilty of widespread illegal secondary boycotting activity conducted in the course of its strike for recognition against a trucking company engaged in interstate commerce, is a State Court, in an action brought under Section 303 of the Labor Management Relations Act, 29 USC § 187, powerless to award the full measure of damages found to have been the proximate result of such illegal activity, upon the Union's claim that

the primary picketing which was carried on simultaneously with the secondary boycotting contributed in some measure to the injury inflicted?

Where there is no showing that the State Court misconstrued or misapplied substantiative federal labor law in awarding a judgment for compensatory damages under Section 303 of the Labor-Management Relations Act, should this Court be called upon to review the evidentiary rulings and procedural details of the trial merely to determine whether the State Court took adequate steps to exclude all irrelevant matter from the jury's consideration?

STATEMENT OF THE CASE

The plaintiff, Overnite Transportation Company, now Respondent before this Court, is a common carrier of freight by motor vehicle operating in the States of Virginia, North Carolina, South Carolina and Georgia. It engages in pick-up and delivery service and over-the-road hauling of general commodities, the great bulk of its shipments being less than truckload lots.

Approximately 40% of the freight transported by the plaintiff is interchange — that is, freight which is picked up and hauled from points within the plaintiff's territory to gateway terminals where it is transferred to other common carriers for delivery to consignees outside this territory, and freight which originates outside the plaintiff's territory and is received by plaintiff from other carriers for delivery to points within its territory (R. 38-39). This interchange freight averaged approximately 46 million pounds per month during the periods in controversy (R. 63-64).

The plaintiff maintains gateway terminals on the south of its territory at Savannah and Atlanta, Georgia, on the west at Greenville, South Carolina, and at Charlotte, Asheville and Winston-Salem, North Carolina, and on the north at Richmond, Virginia (R. 39). In addition, it operates some twenty other terminals in the four-state area and employs over-all approximately 1,500 persons (R. 38, 226).

In the Spring of 1959, the defendant International Brotherhood of Teamsters, now Petitioner before this Court, launched an intensive organizational campaign among plaintiff's employees (R. 284, 311). The Union's effort was aimed primarily at gaining the allegiance of persons employed at the Company's gateway terminals and the larger inter-system terminals at Columbia and Charleston, South Carolina, and Hickory and Greensboro, North Carolina. However, the campaign extended over the Company's entire system (R. 151-152).

In April and May, 1959, two strategy meetings were called by the defendant's Joint Council 9 for the purpose of coordinating the organizational efforts of the various locals (R. 151-152, 303-304). The meetings were attended by top union officials from locals in eleven cities, including Atlanta, Charlotte and Richmond. Also present were the president and two organizers of the Joint Council, and an assistant to a vice-president of the International (R. 152, 306-307).

A similar meeting was held in Atlanta about the middle of May, 1959. By this time it had become clear that the campaign to organize Overnite's employees was not making the desired headway, and accordingly it was decided at this meeting that picketing should commence simul-

taneously at all major terminals of the Company on Sunday, May 17 (R. 307).

The Union's purpose was admittedly that of forcing the Company to recognize the locals as bargaining agents for the employees in their respective territories, although no National Labor Relations Board election had been held, nor was any sought by the Union at any of the Company's terminals (R. 227).

The picket lines went up as scheduled, but relatively few of the Overnite employees honored them. In fact, out of the more than 1,000 persons employed at the eleven terminals where picketing occurred, only 64 — or about 6% — left their work in support of the strike (R. 55-56). However, there was an immediate disruption in the orderly flow of freight passing between the plaintiff and other carriers, and within a short time normal interchange activities were brought virtually to a standstill (R. 61-63, 64-65, 82, 110, 113-114, 125, 132-135, 163, 172-173, 174-175, 182-183, 206-213, 223).

The employees of most neutral secondary carriers with which the plaintiff customarily did business simultaneously and concertedly refused in the course of their work to handle or otherwise deal with the plaintiff's freight. The great majority of these secondary employees were themselves members of the defendant Teamsters Union, and the evidence indicated that their refusal took place as a result of direct appeals by Union agents (Ibid; 100, 108).

At several gateway terminals the Union caused pickets regularly to follow Overnite's pick-up and delivery trucks to the terminals of interchange carriers and to the loading

docks of shippers for whom the plaintiff hauled large quantities of freight (id.). At most of these secondary locations the employees consistently refused to handle Overnite shipments and often refused to do any work while Overnite equipment or personnel were at their employer's premises (R. 103, 113, 125).

When occasionally a Union driver for a secondary employer would have the temerity to disregard the roving picket line, his name and truck number would be quickly recorded and sent to the local office of the Union. This would result in the member's being tried by the Joint Council for violating the Union's hot cargo policy, and disciplinary penalties such as fines were imposed (R. 103-105, 127).

One of the roving pickets testified that their object was to induce the secondary employees "to sit down and stop working" (R. 102). In many instances, they would not rely merely upon the picket sign for this inducement, but would go directly to the docks, gain the attention of the employees working there, and call for a cessation of work (R. 100, 108, 121-123, 125).

Nor did the Union rely solely upon this ambulatory picketing in its efforts to make the boycott effective thoughout the Company's system. Union officials went to the docks of secondary employers, at times when no equipment of the plaintiff was being picketed there, and directed the employees not to load or unload anything from Overnite trucks (R. 57-58, 87-89). In some cases the secondary carrier's terminal manager would be warned in the presence of his employees that a strike would be called against his company if it did not cease handling Overnite's freight (R. 81-82, 163, 179-180, 189).

The plaintiff was forced to institute a number of extraordinary measures to overcome the paralyzing effect of the boycott. Among other things it hired between 125 and 130 extra employees, it made frequent changes in working hours, shift patterns and work assignments in the freight handling group, and assigned operational duties to administrative employees such as salesmen. Because of the vast increase in back hauling and circuitous routing brought on by the refusal of secondary employees to handle its freight, the Company was required to obtain additional road equipment and to assign to its city pick-up and delivery operations some of the heavy over-the-road equipment not normally used for that purpose. It was also necessary to employ guards for the protection of its property and employees, and to engage in a vast amount of pick-up and delivery service on interchange freight which in the absence of a boycott is carried one way by the other carrier (R. 60-64, 223).

The rate of increase in operational profits declined sharply during this period, despite the fact that the trucking industry as a whole was enjoying a very favorable year. Basic figures on costs, profits, volume of business, gross revenues and other relevant items were presented at the trial for all pertinent periods down to the end of 1959, and analyses of these figures demonstrated that the Company was severely damaged by the Union's illegal secondary boycott.

On appeal from the judgment of the trial court the defendant challenged the validity of both the award for actual damages in the amount of $363,193.00 and the award of $500,000.00 in punitive damages. The North Carolina Supreme Court struck all punitive damages from

the judgment upon the ground that only compensatory damages are embraced within the terms of Section 303(b), and the doctrine of federal preemption denies jurisdiction in the state court to entertain a common law tort claim upon the facts alleged, there being no element of violence or threats to public order. However, the Court found upon a careful analysis of the testimony that "the plaintiff's evidence made out a case for the jury on actual damages [and that such evidence], was sufficient to support the amount fixed." (Appendix to Petition, p. 32).

ARGUMENT

I. The State Court Was Not Confronted In This Case With A Conflict Between Local And Federal Law Bearing Upon The Issue Of Compensatory Damages, Nor Did The Court Seek To Apply Any But Federal Substantive Law In Determining What Conduct Is Proscribed By Section 303 Of The Labor Management Relations Act — And Accordingly, No Federally Protected Rights Were Abridged By Entry Of The Judgment Below.

The defendant does not deny before this Court that it engaged in extensive secondary boycotting activities in violation of Section 303 of the Labor Management Relations Act. Nor is there any dispute about the right of the plaintiff under that Section to recover, in a state court action, all of the damages which it sustained by reason of these illegal activities.

Essentially, the reasons advanced by the defendant in support of its petition come to no more than a claim that the compensatory damages awarded below are excessive as a matter of law. Of course, this in itself would not present any basis for issuance of a writ of certiorari by this

Court for review of a state court judgment. 28 USC § 1257(3). Rules of the U. S. Supreme Court, Rule 19.

But Petitioner contends that the excessiveness of the amount awarded is attributable to a failure of the Supreme Court of North Carolina to acknowledge the supremacy of federal law in actions of this kind, and that such failure, under the circumstances of this case, has resulted in an unwarranted interference with the Union's federally protected right of peaceful, primary picketing.

This is indeed a remarkable contention in view of what the North Carolina Court actually said and did, and in light of what the record establishes as the true nature of the defendant's conduct.

At the very outset of its opinion, after quoting pertinent portions of Section 303, the Court stated:

> "The right to maintain the action and the jurisdiction of the State court to hear it arise by congressional grant. In fixing the rights and liabilities of the parties, the Superior Court on the trial, and this Court on appeal, must accept the interpretation the Supreme Court of the United States has placed upon the Acts of Congress here involved." *Ozernite Transportation Company v. International Brotherhood of Teamsters*, 257 N. C. 18 at p. 26.

Obviously then the situation here is unlike the one presented to this Court in *Local 174, Teamsters Union v. Lucas Flour Company*, 369 U. S. 95, where the Supreme Court of Washington had considered itself free to apply local rules of contract law in a suit covered by Section 301. The North Carolina Court, in approaching its consideration

of the instant case, assumed that in actions brought in the state court under Section 303, substantive rules of federal labor law must be applied to the exclusion of any conflicting local law which may obtain in the jurisdiction on the same subject. Not only did the North Carolina Court readily acknowledge this limitation upon its power in selecting applicable substantive law, it relied upon the limitation in striking $500,000.00 in punitive damages from the judgment.

Ignoring all of this, however, the defendant boldly asserts in its petition that "the courts below have applied their own, not federal, concepts to the construction and application of Section 303.".

In an effort to support this assertion the Petitioner points to the fact that the trial court allowed the jury to hear evidence dealing with several phases of the defendant's strike activity, some of which were clearly primary in character and therefore protected. From this it is argued that the damages awarded serve to penalize the defendant for exercising rights guaranteed by federal law, because, as defendant contends, the court failed to explain properly to the jury what activities were lawful and what were unlawful under the secondary boycott provisions of the Act as construed by the National Labor Relations Board and the federal courts.

Unquestionably, the jury did hear testimony relating to strike activity which, standing alone, would not in itself be sufficient to establish the existence of a proscribed secondary boycott. However, this evidence was clearly relevant and admissible in view of other testimony in the case, and the jury was carefully instructed as to the use of this

evidence in accordance with the prevailing rules of federal labor law."

The trial judge began with the following charge: "In the first place, Ladies and Gentlemen, it is entirely legal and lawful for people to belong to a Union. It is entirely legal and lawful for a Union to solicit membership by those who do not belong to it and in doing so they are permitted to undertake various methods . . ., one of which is picketing, and it is not a violation of the law for a labor organization to picket the premises of an employer in an attempt to organize the employees of that company. Neither is it a violation of the law for [the Union] to picket another corporation in an attempt to induce members of the first employer's organization to join" (R. 341-342).

In addition, the court charged the jury in accordance with a written instruction requested by the defendant as follows: "Picketing of the primary employer, that is, the Company with whom the Union has the primary dispute, is not forbidden by Section 303 of the National Labor Relations Act. Therefore, you may not find in favor of the plaintiff as to any damages which may have resulted solely from picketing at the terminals of Overnite Transportation Company" (R. 342).

The defendant complains that the trial court, in giving its instructions on this aspect of the case, "made no distinction as to picketing at other terminals or as to what constituted protected, as distinguished from proscribed, picketing" (Pet. 6). Apparently the defendant has overlooked the following instructions which were given by the court in accordance with the defendant's own written requests:

"There is evidence in this cause of the following of trucks of the plaintiff by certain of the pickets and picketing at the premises of secondary employers while freight was being picked up or delivered by employees of Overnite Transportation Company. In this connection, the Court charges you that Section 303 of the National Labor Relations Act does not contain a provision which condemns picketing of employees of the plaintiff merely because it occurs at a place where it comes to the attention of and incidentally affects employees of another, even where picketing could be carried on at a terminal of the plaintiff where no other employer maintains its place of business. The picketing at the site of another employer while deliveries are being made or freight is being picked up by employees of plaintiff and such incidental effect as results therefrom are factors to be considered in determining whether or not said section of the National Labor Relations Act has been violated, but alone are not conclusive. The presence of these factors does not warrant a failure to consider other facts which are relevant and perhaps countervailing" (R. 342-343).

"The bargaining contracts introduced in evidence in this case contain provisions to the effect that an employee in the bargaining unit covered by said contracts may individually elect whether or not to handle freight interchanged with a carrier against whom a strike is being conducted. At all times relevant to this proceeding the execution of a contract containing such a clause was not illegal. Therefore any individual action of an employee, not induced by the defendant, not to handle the freight of plaintiff would not be a violation of law by the defendant" (R. 347).

There is nothing, we respectfully submit, either in what the state courts said or in what they did, lending any support to defendant's contention that local rather than federal law concepts were followed in arriving at the judgment below. Indeed, there is not even any indication that the law of North Carolina actually differs from the federal law either as to the legality of primary picketing or as to the factors to be considered in distinguishing primary picketing from illegal secondary boycotting. The law which the trial court gave to the jury on this aspect of the case was not always characterized as to source. But if it was state law, it certainly was compatible — and not in conflict — with the law as fashioned by the Labor Board and the federal courts under the national labor policy. *Local 174, Teamsters Union v. Lucas Flour Company*, 369 U. S. 95.

II. Neither Principles Of Federal Labor Law Nor The Facts Established By The Record In This Case Support Petitioner's Contentions Regarding The Severance Of Damages Caused By Protected Strike Activity From Those Caused By Unlawful Boycotting In Suits Brought Under Section 303 Of The Labor Management Relations Act.

Essential to the Petitioner's entire argument before this Court is the broad assumption that much of the strike activity against the plaintiff was protected primary picketing, and that "over two-thirds of the total actual damages claimed by Overnite" resulted "from such picketing" (Pet. 11-12).

The assumption is clearly erroneous, however, upon several grounds. First, it embraces the untenable legal conclusion that no proscribed secondary boycotting activity

was shown to have occurred in five of the eleven cities where Overnite terminals were picketed. The defendant insists that, because there was no direct evidence of ambulatory picketing in Atlanta, Savannah, Columbia, Charleston or Richmond, its strike activity at those locations must automatically be considered as protected without regard to whatever else the evidence may show.

Obviously this is not true because, as the defendant Union would be the first to agree, the presence of ambulatory picketing does not in and of itself, automatically and in all cases, establish a violation of Section 303; and, by the same token, the absence of ambulatory picketing will not in and of itself preclude a finding that a violation of that section has occurred. The lawfulness of the defendant's conduct must be judged upon all of the relevant facts appearing in the record.

And the record in this case abounds with uncontradicted testimony showing (in Atlanta, for example, R. 199-222) consistent, widespread and repeated refusals by members of the Teamsters Union to handle Overnite freight or to work while Overnite equipment was present at the premises of their employers. The evidence further shows that in so doing, these secondary employees were not exercising their separate and individual judgment in the matter, but were acting in concert at the behest and for the benefit of the defendant for the purpose of bringing pressure upon their own employers to stop doing business with Overnite.

That evidence of the sort contained in this record is sufficient to warrant a finding that the Union has violated Section 303 or its counterpart Section 8(b)(4), is supported by a number of federal court decisions. *National*

Labor Relations Board v. Local 364, International Brotherhood of Teamsters, 274 F 2d 19 (C. A. 7); *National Labor Relations Board v. Local 135, International Brotherhood of Teamsters*, 267 F 2d 870 (C. A. 7), *cert. den.* 361 U. S. 914, *reh. den.* 361 U. S. 945; *National Labor Relations Board v. Local 830, International Brotherhood of Teamsters*, 281 F 2d 319 (C. A. 3). And there is nothing in the cases cited by the Petitioner (Pet. 11) indicating a contrary view.

Petitioner's assumption that large portions of the plaintiff's damages were caused by primary picketing is likewise refuted by other facts in the record. For example, the Petitioner proceeds upon the theory that Overnite suffered heavily from the refusal of its own employees and the employees of neutral employers to cross the picket lines at Overnite's gates — whereas in truth these picket lines resulted in a very minimum of inconvenience. Only 64 of Overnite's 1,500 employees ever failed to cross the lines, and all of these were soon replaced. The overwhelming bulk of the difficulty experienced by the Company in trying to continue a profitable business arose from its inability to get freight handled properly at the docks and premises of other employers and from its inability to retain customers whose employees were refusing to work on Overnite's freight. Furthermore, as we have seen, the inducements to engage in such refusals took place not at the site of the primary picket line, but at the customer's or connecting carrier's place of business.[1]

[1] The statement found in footnote 9, page 6 of the Petition, to the effect that plaintiff's excess labor costs were occasioned by the necessity for hiring additional employees to do the work of persons refusing to cross the *primary* picket line, is patently incorrect. The evidence, to which reference is made in the Statement of Case, *supra*, shows that most of this cost was a direct result of secondary employee refusals to work at their own docks.

This is not to say, of course, that none of the damages sustained by plaintiff were the result of otherwise lawful primary picketing. Obviously, a portion of the damages were occasioned by what might be termed primary aspects of the strike — which brings us to the ultimate question of whether the state courts failed to apply federally accepted principles of labor law when they permitted the jury to determine the amount of damages attributable to the Union's illegal conduct under the instructions appearing in the record.

First we should note that the Petitioner is factually in error when it states that "the damages flowing from the alleged illegal picketing were easily severable from the damages flowing from the legal picketing" (Pet. 12). The very nature of the plaintiff's business, particularly the interchange portion precludes the possibility of establishing reliable profit and loss figures on a terminal by terminal basis.

And the nature of the strike activity made it virtually impossible to determine with mathematical accuracy what portion of the Company's losses were allocable to specific items of Union conduct.

The only proper course in such situation was for the plaintiff to present the facts, as it did, dealing with pertinent aspects of its business before, during and after the strike. It then became a matter for the jury to determine what portion of the injury resulted from the defendant's illegal acts — as a matter of proximate cause — under proper instructions of the Court. Excerpts from these instructions were quoted by the North Carolina Supreme

Court in its opinion (Pet. Appendix, p. 31-32). The full text appears in the record (R. 339-368).

Petitioner cites a number of decisions in which the federal courts have discussed, in another context, the importance of differentiating between protected primary activity and proscribed secondary activity (Pet. 13-15). In most of these cases the courts were able to draw the line with considerable exactitude because they were dealing with language to be employed in an injunction or a Labor Board order.

Nothing approaching the same precision can be employed in a Section 303 action when the nebulous factor of causation is an inescapable ingredient. In such situation, the approach used by the Court of Appeals for the Ninth Circuit in *Carpenters Union Local* 131 *v. Cisco Construction Co.*, 266 F 2d 365 (C. A. 9), *cert. den.* 361 U. S. 828, and by this Court in *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, is appropriate, and that is precisely what the North Carolina Court was justified in doing in the instant case.

Actually, the Court did not go as far as the *Cisco* case, which treated all of the strike activity as infected with illegality by reason of the fact that proscribed boycotting activity was inextricably intermingled throughout. Rather, the North Carolina Court took an approach more favorable to defendant and instructed the jury to award only such damages as it found proximately resulted from the illegal portion. Under these circumstances the Petitioner is not justified in charging that the action of the courts below deprived it of any federally protected rights.

CONCLUSION

It is submitted that the Petitioner has failed to show any respect in which the North Carolina Courts have misconstrued or misapplied any decisions of this Court or any principle of federal labor law governing actions under Section 303; that the judgment below is just, proper, and free from any of the errors claimed in the Petition; that no sound reason has been advanced warranting a review by this Court; and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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